



PTO/SB/17 (11-04)

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FEE TRANSMITTAL

For FY 2005

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 225.00

Complete if Known

Application Number 09/867,582

Filing Date 31 May 2001

First Named Inventor Lawrence J. Choi

Examiner Name Khanh B. Pham

Art Unit 2177

Attorney Docket No. 1005-007

METHOD OF PAYMENT (check all that apply)☐ Check ☒ Credit Card ☐ Money Order☐ Deposit Account ☐ None

Deposit Account Number 50-2504

Deposit Account Name Michael N. Haynes

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☐ Charge fee(s) indicated below☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17☒ Credit any overpayments

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Fee Description	Fee (\$)	Small Entity Fee (\$)	Fee Paid(\$)
Utility Filing Fee	790	395	
Design Filing Fee	350	175	
Plant Filing Fee	550	275	
Reissue Filing Fee	790	395	
Provisional Filing Fee	160	80	

Subtotal (1) \$ 0.00

FEE CALCULATION (continued)**2. EXTRA CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20	18	9
Each independent claim over 3	88	44
Multiple dependent claims	300	150
For Reissues, each claim over 20 and more than in the original patent	18	9
For Reissues, each independent claim more than in the original patent	88	44

Total Claims Extra Claims Fee (\$) Fee Paid (\$)

- 20 or HP = x =
HP = highest number of total claims paid for, if greater than 20

Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)

- 3 or HP = x =
HP = highest number of independent claims paid for, if greater than 3

Multiple Dependent Claims Fee (\$) Fee Paid (\$)

Subtotal (2) \$ 0.00

3. OTHER FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)	Fee Paid(\$)
1-month extension of time	110	55	55.00
2-month extension of time	430	215	
3-month extension of time	980	490	
4-month extension of time	1,530	765	
5-month extension of time	2,080	1,040	
Information disclosure stmt. fee	180	180	
37 CFR 1.17(q) processing fee	50	50	
Non-English specification	130	130	
Notice of Appeal	340	170	
Filing a brief in support of appeal	340	170	170.00
Request for oral hearing	300	150	
Other:			

Subtotal (3) \$ 225.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 40,014	Telephone 434-972-9988
Name (Print/Type)	Michael N. Haynes	Date	3 December 2004

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Appeal Brief (12 sheets)

Appendix A (2 sheets)

Application No.:	09/867,582	Art Unit:	2177
Confirmation No.:	6556	Examiner:	Khanh B. Pham
Application Filing Date:	31 May 2001	Inventor:	CHOI et al.
Document Submission Date:	3 December 2004	Docket:	1005-007

3 December 2004
Date

Eden Brown
Name of Person Making Deposit

Eden Brown
Signature of Person Making Deposit



12.06.04

AF/2177 #
PATENT
etw

Serial No. 09/867,582

Attorney Docket No. 1005-007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Lawrence J. Choi et al.
Serial No. : 09/867,582
Filed : 31 May 2001
For : METHOD, SYSTEM, AND DEVICE FOR TYPING
CUSTOMERS/PROSPECTS
Art Unit : 2177
Examiner : Khanh B. Pham

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01 FC:2402
02 FC:2251

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55.00 OP

APPEAL BRIEF

Sir:

The Applicants respectfully submit this appeal brief in response to the Office Action of 3 May 2004 finally rejecting each of the pending claims 1-3. This Appeal Brief is in furtherance of the Notice of Appeal filed 3 September 2004. In addition to paying the requisite fee for an Extension of Time under 37 C.F.R. §1.136(a), Applicant petitions to extend the due date for this Appeal Brief to 3 December 2004.

I. REAL PARTY IN INTEREST

The real party in interest is Rosetta Marketing Strategies Group, a corporation having a place of business at 103 Carnegie Center, Suite 202, Princeton, New Jersey 08540.

II. RELATED APPEALS AND INTERFERENCES

Also under appeal is the final rejection of claims of United States Patent Application 09/867,803.

III. STATUS OF CLAIMS

Claims 1-3 are pending in this application and have been finally rejected. Claims 1-3 are the subject of this appeal. Claims 1, 2, and 3 are the independent claims.

IV. STATUS OF AMENDMENTS

A reply to the final rejection was filed on 7 July 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 1

Claim 1 recites a computer-assisted method for typing customers/prospects (see at least page 59, lines 7-20; Fig. 8). The method comprises the activities of: refining a survey via bestfit clustering (see at least page 12, lines 12-14; page 47, line 4 - page 50, line 12; Fig. 2a; Fig. 2b; Fig. 2c; and Fig. 8, element 8200); refining survey results via composition analysis (see at least page 50, line 13 - page 52, line 13; page 23, line 8 - page 24, line 2; Fig. 4; and Fig. 8, element 8400); and identifying clusters of customers/prospects from the survey results via champion/challenger cluster refinement (see at least page 50, lines 13-20; page 20, lines 2-8; Fig. 3; and Fig. 8, element 8500) and panel analysis (see at least page 57, line 23 - page 59, line 6; page 36, line 28 - page 37,

lines 4 - 10; Fig. 7; and Fig. 8, element 8500).

Independent Claim 2

Claim 2 recites a computer-readable medium (see at least page 59, line 21 through page 61, line 5 and FIG. 9, element 9300) containing instructions (see at least page 59, line 21 through page 61, line 5 and FIG. 9, element 9400) for activities comprising: refining a survey via bestfit clustering (see at least page 12, lines 12-14; page 47, line 4 - page 50, line 12; Fig. 2a; Fig. 2b; Fig. 2c; and Fig. 8, element 8200); refining survey results via composition analysis (see at least page 50, line 13 - page 52, line 13; page 23, line 8 - page 24, line 2; Fig. 4; and Fig. 8, element 8400); and identifying clusters of customers/prospects from the survey results via champion/challenger cluster refinement (see at least page 50, lines 13-20; page 20, lines 2-8; Fig. 3; and Fig. 8, element 8500) and panel analysis (see at least page 57, line 23 - page 59, line 6; page 36, line 28 - page 37, lines 4 - 10; Fig. 7; and Fig. 8, element 8500).

Independent Claim 3

Claim 1 recites an apparatus (see at least page 59, line 21 through page 61, line 5 and FIG. 9, elements 9100, 9200, 9300, 9400, and 9500) for typing customers/prospects, comprising: means for (see at least page 59, line 21 through page 61, line 5 and FIG. 9, elements 9100, 9200, 9300, 9400, and 9500, and more particularly page 60, lines 4-15 and FIG. 9, element 9200) refining a survey via bestfit clustering (see at least page 12, lines 12-14; page 47, line 4 - page 50, line 12; Fig. 2a; Fig. 2b; Fig. 2c; and Fig. 8, element 8200); means for refining survey results via composition analysis (see at least page 50, line 13 - page 52, line 13; page 23, line 8 - page 24, line 2; Fig. 4; and Fig. 8, element 8400); and means for identifying clusters of customers/prospects from the survey results via champion/challenger cluster refinement (see at least page 50, lines 13-20; page 20, lines 2-8; Fig. 3; and Fig. 8, element 8500) and panel analysis (see at least page 57, line 23 - page 59, line 6; page 36, line 28 - page 37, lines 4 - 10; Fig. 7; and

Fig. 8, element 8500).

VI. GROUNDS OF REJECTION

Claims 1-3 were rejected as anticipated under 35 U.S.C. §102(e). In support of the rejection, Wood (U.S. Publication No. 20020045154) was cited.

VII. ARGUMENT

A. The Anticipation Rejection

Claims 1-3 were rejected as anticipated under 35 U.S.C. §102(e). In support of the rejection, Wood (U.S. Publication No. 20020045154) was cited. This rejection is respectfully traversed.

1. Generally

To anticipate expressly, the “invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim”. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter “with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention”. *Crown Operations Int’l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) (“A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.”)

2. Lexicography

In construing claims, the Federal Circuit has held that:

[c]laim construction analysis begins with the intrinsic evidence. *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). It is well-established that **the patentee can act as his own lexicographer**, so long as he clearly states any special definitions of the claim terms in the patent specification or file history. *Id.* Even when guidance is not provided in explicit definitional format, “**the specification may define claim terms ‘by implication’** such that the meaning may be ‘found in or ascertained by a reading of the patent documents.’” *Bell Atl. Network Servs., Inc. v. Covad Communications Group, Inc.*, 262 F.3d 1258, 1268 (Fed. Cir. 2001) (quoting *Vitronics*, 90 F.3d at 1582, 1584 n.6). Moreover, if a disputed term has “no previous meaning to those of ordinary skill in the prior art[,] its meaning, then, must be found [elsewhere] in the patent.” *J.T. Eaton & Co. v. Atl. Paste & Glue Co.*, 106 F.3d 1563, 1570 (Fed. Cir. 1997) ... As we held in *J.T. Eaton*, absent such an accepted meaning, we construe a claim term only as broadly as provided for by the patent itself. 106 F.3d at 1570. The duty thus falls on the patent applicant to provide a precise definition for the disputed term. *Id.* Moreover, where evidence such as expert testimony or technical dictionaries demonstrates that artisans would attach a special meaning to a claim term or would attach no meaning at all to the claim term independent of the specification “general-usage dictionaries are rendered irrelevant with respect to that term ...” *Vanderlande Indus. Nederland BV v. Int’l Trade Comm’n*, 366 F.3d 1311, 1321 (Fed. Cir. 2004). “[A] general-usage dictionary cannot overcome credible art-specific evidence of the meaning or lack of meaning of a claim term.” *Id.* (citation omitted).

Irdeto Access, Inc. v. Echostar Satellite Corp., No. 04-1154, 2004 U.S. App. Lexis 19235, at *12-3 (Fed. Cir. Sept. 14, 2004).

a. “Bestfit Clustering”

Applicant has elected to act as a lexicographer by reciting that “**bestfit clustering**” is a “segmentation algorithm that maximizes ‘fit’ as the **(weighted) number of questions** for which a respondent’s answers correspond to the **mode** of responses of that particular respondent’s segment.” See page 12, lines 12-14.

b. “Champion/challenger Cluster Refinement”

Applicant has elected to act as a lexicographer by reciting that “**champion/challenger cluster refinement**” comprises:

“[o]nce a ‘champion’ emerges, it becomes the standard against which subsequent analyses are to be evaluated. If one of these ‘challengers’ outperforms the current ‘champion’ in any of the 4 metrics discussed in section II and is not worse in the remaining 3 metrics, that ‘challenger’ then becomes the new ‘champion.’ This process is continued until no new ‘challengers’ win after 2 rounds of analysis subsequent to the creation of the current ‘champion.’”

See page 20, lines 2-8.

c. “Composition Analysis”

Applicant has elected to act as a lexicographer by reciting, in a section of the application titled “**composition analysis**”, a “solution” that describes the particulars of “composition analysis”, that “solution” comprising:

“each observation must be evaluated using the following criteria:

- What fraction of questions answered by each respondent corresponds to the respective segment's response modes?
- What is the probability that an individual is a "typical" member of this segment?
- What is the probability that the individual belongs in each of the segments of the segmentation solution?

Based on these criteria, a segment member can be classified into one of 3 groups:

- Exemplars: An individual close to the core of a segment. This person has "high" scores for all 3 criteria discussed above
- In-Betweeners: An individual "between" 2 or more segments. Generally the probabilities of being in those segments are comparable
- Outliers: An individual who is not a "typical" member of his assigned segment and is also "between" 2 or more segments."

See page 22, line 3 – page 24, line 2.

d. "Panel analysis"

Applicant has elected to act as a lexicographer by reciting, in a section of the application titled "**panel analysis**" "panels of customers that are dedicated to studying customer behaviors within a specific channel (e.g. Internet), category/industry (e.g. consumer packaged goods), or behavioral pattern (e.g. media consumption). Most companies use these panels to obtain a better understanding of their competitive markets. Current best practices in using these panels involve using analyses of demographics and consumption levels to divine the drivers of consumer demand." See page 36, line 28 and page 37, lines 4 - 10.

3. Claims 1-3: Wood Fails to Anticipate “Bestfit Clustering”

Each of claims 1-3 recites “refining a survey via bestfit clustering”. As stated above, the current application defines “bestfit clustering” as a “segmentation algorithm that maximizes ‘fit’ as the **(weighted) number of questions** for which a respondent’s answers correspond to the **mode** of responses of that particular respondent’s segment.”

Wood et al. does not teach expressly or inherently “bestfit clustering” or a “mode of responses”. Instead, Wood at most allegedly recites “a node” that is “defined as **weighted averages** of dimensions and user traits”. See Wood at page 8, paragraphs 182-188. Wood does not teach expressly or inherently that these “dimensions and user traits” are “questions” or relate to “answers” that “correspond to the mode of responses”. In fact, Wood makes no mention of a “mode” in the statistical sense whatsoever. Further, Wood’s “weighted averages of **dimensions**” are not a “weighted **number** of questions”.

Accordingly, it is respectfully submitted that the rejection of claims 1-3 is unsupported by Wood et al. and should be reversed.

4. Claims 1-3: Wood Fails to Anticipate “Champion/challenger Cluster Refinement”

Each of claims 1-3 recite “identifying clusters of customers/prospects from the survey results via champion/challenger cluster refinement.” As stated above, the current application defines “champion/challenger cluster refinement” as comprising:

“[o]nce a ‘champion’ emerges, it becomes the standard against which subsequent analyses are to be evaluated. If one of these ‘challengers’ outperforms the current ‘champion’ in any of the 4 metrics discussed in section II and is not worse in the remaining 3 metrics, that ‘challenger’ then becomes the new ‘champion.’ This process is continued until no new ‘challengers’ win after 2 rounds of analysis subsequent to the creation of the current ‘champion.’”

Wood et al. does not teach expressly or inherently “identifying clusters of customers/prospects from the survey results via champion/challenger cluster refinement.” Instead, at most Wood allegedly recites “[f]or each ad that is deployed, all components that made up the ad are recorded. For example, graphics used, colors, sounds, and multimedia portions text, font, layout, format, timing and all other components are recorded. Each element is tested and changed using a champion/challenger system designed to choose the elements that drive the highest click-through and conversion rates for each of the classification types.” See paragraphs [0299] – [0301]. Thus, while Wood mentions the words “champion/challenger system”, no evidence has been entered into the record that this system bears any resemblance whatsoever to the “champion/challenger cluster refinement” algorithm defined by Applicant. Moreover, Wood applies the Wood’s “champion/challenger system” to test ad components and does not use it to identify “clusters of customers/prospects from the survey results”

Accordingly, it is respectfully submitted that the rejection of claims 1-3 is unsupported by Wood et al. and should be reversed.

5. Claims 1-3: Wood Fails to Anticipate “Composition Analysis”

Each of claims 1-3 recite “refining survey results via composition analysis”. As stated above, the current application defines “composition analysis” to comprise:

each observation must be evaluated using the following criteria:

- What fraction of questions answered by each respondent corresponds to the respective segment’s response modes?
- What is the probability that an individual is a “typical “ member of this segment?
- What is the probability that the individual belongs in each of the segments of the segmentation solution?

Based on these criteria, a segment member can be classified into one of 3 groups:

- Exemplars: An individual close to the core of a segment. This person has “high” scores for all 3 criteria discussed above
- In-Betweeners: An individual “between” 2 or more segments. Generally the probabilities of being in those segments are comparable
- Outliers: An individual who is not a “typical” member of his assigned segment and is also “between” 2 or more segments

Wood et al. does not teach expressly or inherently “refining survey results via composition analysis”. Instead, at most Wood allegedly recites “[t]he questions asked consist of 70 questions grouped into 4 separate scales of two letter possibilities creating a total of 16 possible combinations.” See paragraph [0227]. No evidence has been entered into the record that Wood’s method by which “questions” are “grouped” bears any resemblance whatsoever to “composition analysis” as defined by applicant.

Accordingly, it is respectfully submitted that the rejection of claims 1-3 is unsupported by Wood et al. and should be reversed.

6. Claims 1-3: Wood Fails to Anticipate “Panel Analysis”

Each of claims 1-3 recites “identifying clusters of customers/prospects from the survey results” “via panel analysis.” As stated above, applicant defines “panel analysis” as utilizing **“panels of customers that are dedicated to studying customer behaviors** within a specific channel (e.g. Internet), category/industry (e.g. consumer packaged goods), or behavioral pattern (e.g. media consumption). Most companies use these panels to obtain a better understanding of their competitive markets. Current best practices in using these panels involve using analyses of demographics and consumption levels to divine the drivers of consumer demand.” See page 36, line 28 and page 37, lines 4 - 10.

Wood et al. does not teach expressly or inherently “identifying clusters of customers/prospects from the survey results” “via panel analysis.” Moreover, Wood does not even teach expressly or inherently “panel analysis” or any comparable phrase or concept.

Accordingly, it is respectfully submitted that the rejection of claims 1-3 is unsupported by Wood et al. and should be reversed.

VIII. CLAIMS APPENDIX

Appendix A sets forth all pending claims in the state in which they were appealed.

IX. EVIDENCE APPENDIX

No evidence was submitted pursuant to 37 CFR 1.130, 1.131, or 1.132.

X. RELATED PROCEEDINGS APPENDIX

No decisions have been rendered by a court or the Board in any related proceeding.

SUMMARY

In view of the above, Applicants submit that all claims on appeal distinguish over the cited art and respectfully request that the Examiner's rejections of these claims should be reversed.

Applicants therefore respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's decision rejecting claims 1-3 and direct the Examiner to pass the application to issue.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. §1.16 or §1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

Michael Haynes PLC

Date: 3 December 2004



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PATENT

Serial No. 09/867,582

Attorney Docket No. 1005-007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Lawrence J. Choi et al.
Serial No. : 09/867,582
Filed : 31 May 2001
For : METHOD, SYSTEM, AND DEVICE FOR TYPING
CUSTOMERS/PROSPECTS
Art Unit : 2177
Examiner : Khanh B. Pham

Mail Stop Appeal Brief-Patents

Commissioner for Patents

P.O. Box 1450

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APPENDIX A

1. (Original) A computer-assisted method for typing customers/prospects, comprising the activities of:
 - refining a survey via bestfit clustering;
 - refining survey results via composition analysis; and
 - identifying clusters of customers/prospects from the survey results via champion/challenger cluster refinement and panel analysis.
2. (Previously Presented) A computer-readable medium containing instructions for activities comprising:

refining a survey via bestfit clustering;
refining survey results via composition analysis; and
identifying clusters of customers/prospects from the survey results via
champion/challenger cluster refinement and panel analysis.

3. (Original) An apparatus for typing customers/prospects, comprising:
means for refining a survey via bestfit clustering;
means for refining survey results via composition analysis; and
means for identifying clusters of customers/prospects from the survey results via
champion/challenger cluster refinement and panel analysis.